IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6464 OF 2006

Mr.Bajirao Bala Hole ...Petitioners

Versus

M/s. Magarpatta Township
Development & Construction
Company Ltd and Ors. ....Respondents

N.V.Walawalkar with U.B.Nighot for the petitioners.
R.A. Jahgirdar with Mr.Shailendra S.Kanetkar for respondent no.1.

CORAM: S.C.DHARMADHIKARI, J.

13th December, 2007.

P.C. :

1. This Writ petition is directed against an Order passed by the lower Appellate Court in Misc. Civil Appeal no. 178 of 2006 by which the Appeal preferred by Original Defendant no.42 has been allowed. The

order of the trial Court in the suit instituted by the present petitioner below Exhibit-5 dated 6.6.2006 has been set aside. Resultantly, the complaint of Mr.Walawalkar, Learned Senior Counsel appearing for the petitioner is that, there is no interim protection. Further, his grievance is that the Appellate Court has gone into great details at an inter-locutory stage while reversing the findings of the Trial Court.

2. In my view, the interim injunction was granted on 6.6.2006. The Appeal has been allowed on 24.7.2006. From that date till today, there is no protection in favour of the petitioner/original plaintiff. The lower Appellate Court has found that the appellant before it is developing the property by investing huge amount Further, both sides do not dispute that substantial construction activity has been carried out at site. In such circumstances, while clarifying that all observations of the courts below are tentative and prima-facie, it must be observed that parties to the suit and their nominees, so also, the persons claiming through them claim the immovable property subject to the pending suit and all orders made thereunder. It

would be open for the petitioner, to point out at the ultimate stage that no equities can be claimed by such parties since the suit was pending.

3. Needless to clarify, that courts below must decide the suit uninfluenced by any observations and on the basis of oral and documentary evidence on record. The Trial Court to endeavour and dispose off the suit in question, as expeditiously as possible, and by the end of 2008. Petition disposed off. No order as to costs.

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